IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 17452 of 2006(C)

PETITIONER:

K. ABDUL SALAAM, KUTHURUMMAL HOUSE,
KAVAAI AMSOM, PAYYANNUR DESOM, P.O. KAVAAI,
KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:
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1. ASSESSING AUTHORITY TAHSILDAR,
TALIPARAMBA, KANNUR.

2. THE VILLAGE OFFICER, PAYYANNUR.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE OWNERSHIP CERTIFICATE BEARING NO. L.DIS.R2-13025/98 DATED 9.11.1998

EXT.P2 TRUE COPY OF ORDER ISSUED BY THE FIRST RESPONDENT BEARING NO. D4/6261/00 DATED 1.7.02

EXT.P2(a) TRUE COPY OF DEMAND NOTICE BEARING REF. NO. D3-6261/2000 DATED 2.11.2002

EXT.P3 TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 23.11.2002

EXT.P4 TRUE COPY OF RECEIPT OBTAINED FROM THE 2ND RESPONDENT BEARING NO. 5589428 DTED 24.12.2002

EXT.P5 TRUE COPY OF ACKNOWLEDGEMENT CERTIFICATE DATED 22.7.2006 ISSUED BY THE SECRETARY, MUNICIPALITY OF PAYYANNUR.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 17452 OF 2006

Dated this the 10th day of August, 2007

JUDGMENT

Petitioner is challenging assessment and demand of luxury tax in respect of a residential building plinth area of which is above the limit that attracts luxury tax. Petitioner's case is that completion of construction of the building was in 1998. Since Section 5A came into force from 1.4.1999, petitioner is not liable to pay luxury tax under the Kerala Building Tax Act is his contention. Petitioner rests his claim based on certificate issued by the local authority. It is very common that local authority issues certificate and gives number to the building for the purpose of applying for electricity connection, water connection, etc. which is not conclusive evidence of full completion of the building that attracts building tax. Petitioner has no case that petitioner is not liable to pay building tax on completion of construction of the building and the dispute is only regarding liability for luxury tax. However, petitioner did not file any return on completion of construction of the building for the purpose of building

tax assessment. The case of the respondents is that completion of construction of the building was after 1.4.1999 and therefore petitioner is liable to pay luxury tax. Even though documents produced by petitioner from the Municipality are not conclusive evidence, the period of completion of construction of the building could be ascertained from other documents such as investments evidenced by withdrawals from Bank for construction, taking of electricity connection temporarily for construction purpose that attracts commercial tariff, and thereafter conversion of the same to domestic tariff, first bill paid under such tariff, after regular occupancy on completion of construction of the building. Probably there may be other evidence such as date of house warming, postal correspondence received in the new address, etc. In the circumstances, I feel one more opportunity can be granted to the petitioner to produce full documents particularly those referred above before the first respondent for reconsideration. W.P. is accordingly disposed of directing the first respondent to give an opportunity to the petitioner to produce all documents and substantiate his case. First respondent will consider the

materials and evidence produced by the petitioner and if required conduct enquiry about the genuineness of the same with the office of KSEB, Water Authority and take a decision through a speaking order which should be done within a period of three months from now. Petitioner will produce copy of the judgment and appear for hearing before the assessing officer. If petitioner is not found to be liable, the amount deposited by him will be refunded to the petitioner or otherwise balance liability can be demanded and recovered from the petitioner.

(C.N.RAMACHANDRAN NAIR)
Judge